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AMENDED IN ASSEMBLY MAY 23, 2008

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AMENDED IN ASSEMBLY APRIL 8, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2866

Introduced by Assembly Member De Leon

February 22, 2008

An act to amend Sections 48000 and 48004 of, and to add Sections ~~43610.5 and 48001.5~~ 40059.5, 48001.5, and 48004.5 to, the Public Resources Code, relating to solid waste, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2866, as amended, De Leon. Solid waste: ~~closure liability~~: solid waste disposal ~~fees~~: *fees: postclosure trust fund*.

(1) Existing law, the California Integrated Waste Management Act of 1989, requires an operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization based on the amount of solid waste disposed of at each disposal site. Commencing with the 1995–96 fiscal year, the act requires the California Integrated Waste Management Board to establish the amount of the fee, as specified, and limits the fee to a maximum of \$1.40 per ton. The fees are required to be deposited in the Integrated Waste Management Account (account) in the Integrated Waste Management Fund, and the board is authorized

to expend the money in the account, upon appropriation by the Legislature, to administer and implement the act.

This bill would, on and after July 1, 2009, establish the amount of the fee in an amount of \$2 per ton and would require \$.60 of that fee after that date to be available for expenditure by the board, upon appropriation by the Legislature, in accordance with a specified schedule.

The bill would require that from July 1, 2009, until June 30, ~~2016, 20% 2012, 25%~~ of the additional fee revenues be expended to fund demonstration projects by operators of ~~diesel and natural gas fleets to accelerate the commercialization of hybrid hydraulic and hybrid electric propulsion systems in medium- and heavy-duty~~ *certain trucks used at solid waste facilities*, for the collection of recyclables, yard waste, and garbage, ~~and in trucks used and~~ for the delivery and servicing of residential and commercial solid waste, ~~recycling waste, recycling,~~ and yard waste containers. *The bill would also require this percentage to be used for projects that demonstrate the commercial viability of producing clean transportation fuels.*

The bill would require, on and after July 1, 2009, until June ~~20 30, 2016, that 25% 20%~~ of the additional fee revenues be expended by the board, upon appropriation by the Legislature in the annual Budget Act and would increase that percentage of the additional fee revenues subject to appropriation in the annual Budget Act to 45%, until June 30, 2017, ~~would increase 70%, until July 1, 2020, and would increase to 100% after that date July 1, 2020.~~

The bill would also require, from July 1, 2009, until June 30, 2020, that 30% of the additional fee revenues be expended for *compost* projects ~~to divert 50% of compostable organics from land disposal by the year 2020, and for projects that demonstrate the commercial viability of producing clean transportation fuels, including ethanol, from municipal solid waste, and converting landfill gas to clean transportation fuels, as specified that will advance the board's goal of diverting 50% of compostable organics from land disposal by the year 2020.~~

The bill would require the board, when awarding grant funds or loans for the demonstration project and compost project, to make not less than 40% available for eligible projects in Southern California and not less than 40% for projects in Northern California, as defined.

The bill would require the board, on and after July 1, 2009, but no later than July 1, 2020, to deposit 25% of the fee revenues in the State Solid Waste ~~Closure~~ *Postclosure* Trust Fund, which the bill would

establish in the *State Treasury* and continuously appropriate to the board. The bill would authorize the board to expend the money in the trust fund ~~to pay for any future liability of the state resulting from the failure of a landfill operator to meet its responsibilities for landfill closure and postclosure care~~ *to pay for required closure and postclosure activities that have not been performed by the owner of a solid waste landfill, if the solid waste landfill meets certain conditions.* The board would be required to maintain an amount of \$50,000,000 in the trust fund, and if the amount of the fee revenues allocated to the trust fund exceeds that amount, the board would be required to expend those excess amounts upon appropriation by the Legislature in the annual Budget Act, *except as specified.*

The board would be required to recover from the owner of a solid waste landfill the money expended from the State Solid Waste Postclosure Trust Fund as a result of the landfill owner's failure to comply with a final order from the board and to deposit in the trust fund all funds recovered by the board, less certain actual and necessary costs. The board would be required, by January 1, 2010, to report to the Legislature on matters related to the trust fund.

The bill would additionally specify that the funds in the account may be used by the board, upon appropriation by the Legislature, for grant and loan programs that are authorized or required to be administered by the board pursuant to the act.

~~(2) The act requires a person owning or operating a solid waste landfill to submit to the board, the appropriate California regional water quality control board, and the local enforcement agency, a closure plan and a postclosure maintenance plan for the solid waste landfill. The act requires that person to also submit to the board evidence of financial ability in an amount, as specified, to provide for the closure and postclosure maintenance required by the closure and postclosure maintenance plans for the landfill. The act requires the owner and operator of a solid waste landfill to close, and to maintain the landfill during postclosure, in accordance with the most recent closure plan and the most recent postclosure maintenance plan approved by the board.~~

~~This bill would provide that an owner or operator of a disposal site who does not close and maintain the disposal site in accordance with the most recent closure plan or postclosure plan approved by the board is liable for any costs incurred by the board as a result of that failure. The board would be authorized to recover from that owner or operator any costs incurred by the board for the closure and postclosure~~

~~maintenance of that site. The bill would require that any money recovered by the board be deposited in the Integrated Waste Management Account.~~

(2) Under the act, each county, city, or district is authorized to determine aspects of solid waste handling that are of local concern and the means by which the services are to be provided. A solid waste enterprise is a person regularly engaged in the business of providing solid waste handling services.

This bill would require a permit, contract, or franchise granted by a local agency for solid waste handling services that establishes or regulates the service rates that can be charged by the solid waste enterprise, and any request for a bid or proposal for solid waste handling services, to allow the solid waste enterprise to increase the rates it charges for solid waste collection services to include certain fees, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 40059.5 is added to the Public Resources
2 Code, to read:
3 40059.5. (a) A permit, contract, or franchise granted by a
4 local agency for solid waste handling services that establishes or
5 regulates the service rates that can be charged by the solid waste
6 enterprise, and any request for a bid or proposal for solid waste
7 handling services, shall allow the solid waste enterprise to increase
8 the rates it charges for solid waste collection services to include
9 both of the following:
10 (1) The full amount of the fee imposed on the solid waste
11 enterprise by the operator of a solid waste disposal facility
12 pursuant to Section 48000.

1 (2) *The full amount of a fee imposed on the solid waste*
2 *enterprise by the operator of a solid waste disposal facility*
3 *pursuant to the provisions of a local permit, statute, or ordinance.*

4 (b) *A permit, contract, or franchise or request granted by a*
5 *local agency for solid waste handling services or a bid or proposal*
6 *for solid waste handling services shall not waive the requirements*
7 *of this section, and any attempted waiver shall be null and void*
8 *as against public policy.*

9 (c) *Except as otherwise expressly provided in this section, the*
10 *requirements of this section do not otherwise alter the authority*
11 *of a local agency to determine aspects of solid waste collection*
12 *and handling pursuant to Section 40059.*

13 ~~SECTION 1. Section 43610.5 is added to the Public Resources~~
14 ~~Code, to read:~~

15 ~~43610.5. (a) An owner or operator of a disposal site who does~~
16 ~~not close or maintain the disposal site in accordance with the most~~
17 ~~recent closure plan or postclosure plan approved by the board is~~
18 ~~liable for any costs incurred by the board as a result of that failure.~~
19 ~~The board may recover from the owner or operator of the disposal~~
20 ~~site any costs incurred by the board for the closure and postclosure~~
21 ~~maintenance of that site. The amount of any costs that may be~~
22 ~~recovered pursuant to this section shall include, where applicable,~~
23 ~~interest on any amount paid.~~

24 ~~(b) The amount of costs determined pursuant to this section~~
25 ~~shall be recoverable, at the discretion of the board, either in a~~
26 ~~separate action or by way of intervention as of right in an action~~
27 ~~for contribution or indemnity.~~

28 ~~(c) Money recovered by the board pursuant to this section shall~~
29 ~~be deposited in the Integrated Waste Management Account.~~

30 ~~SEC. 2. Section 48000 of the Public Resources Code is~~
31 ~~amended to read:~~

32 ~~48000. (a) An operator of a disposal facility shall pay a fee~~
33 ~~quarterly to the State Board of Equalization which that is based~~
34 ~~on the amount, by weight or volumetric equivalent, as determined~~
35 ~~by the board, of all solid waste disposed of at each disposal site.~~

36 ~~(b) Until July 1, 2009, the amount of the fee shall be established~~
37 ~~by the board at an amount that is sufficient to generate revenues~~
38 ~~equivalent to the approved budget for that fiscal year, including a~~
39 ~~prudent reserve, but the fee shall not exceed one dollar and forty~~
40 ~~cents (\$1.40) per ton.~~

1 (c) On and after July 1, 2009, the amount of the fee shall equal
2 two dollars (\$2) per ton.

3 (d) The board and the State Board of Equalization shall ensure
4 that all the fees for solid waste imposed pursuant to this section
5 that are collected at a transfer station are paid to the State Board
6 of Equalization in accordance with this article.

7 (e) Notwithstanding Section 48001, on and after July 1, 2009,
8 an amount of sixty cents (\$0.60) of the fee imposed for each ton
9 of solid waste disposed of at each disposal site shall be available
10 to the board for expenditure pursuant to Section 48001.5.

11 SEC. 3. Section 48001.5 is added to the Public Resources Code,
12 to read:

13 48001.5. The fee revenues collected by the State Board of
14 Equalization pursuant to subdivision (e) of Section 48000 shall be
15 available to the board, upon appropriation by the Legislature, for
16 expenditure by the board in accordance with the following:

17 ~~(a) (1) On and after July 1, 2009, until June 30, 2016, 20 percent~~
18 ~~of the fee revenues shall be expended to fund demonstration~~
19 ~~projects by operators of diesel and natural gas fleets to accelerate~~
20 ~~the commercialization of hybrid hydraulic and hybrid electric~~
21 ~~propulsion systems in medium- and heavy-duty trucks used for~~
22 ~~the collection of recyclables, yard waste, and garbage, and in trucks~~
23 ~~used for the delivery and servicing of residential and commercial~~
24 ~~solid waste, recycling, and yard waste containers.~~

25 ~~(2) (A) On and after July 1, 2009, until June 30, 2016, 25~~
26 ~~percent of the fee revenues shall be expended by the board, upon~~
27 ~~appropriation by the Legislature in the annual Budget Act.~~

28 ~~(B) On and after July 1, 2016, until June 30, 2017, 45 percent~~
29 ~~of the fee revenues shall be expended by the board, upon~~
30 ~~appropriation by the Legislature in the annual Budget Act.~~

31 ~~(C) On and after July 1, 2017, until June 30, 2020, 70 percent~~
32 ~~of the fee revenues shall be expended by the board, upon~~
33 ~~appropriation by the Legislature in the annual Budget Act.~~

34 ~~(D) On and after July 1, 2020, 100 percent of the fee revenues~~
35 ~~shall be expended by the board, upon appropriation by the~~
36 ~~Legislature in the annual Budget Act.~~

37 ~~(b) On and after July 1, 2009, until June 30, 2020, 30 percent~~
38 ~~of the fee revenues shall be expended by the board for both of the~~
39 ~~following:~~

1 ~~(1) Projects to achieve the goal of diverting 50 percent of~~
2 ~~compostable organics from land disposal by the year 2020.~~

3 ~~(2) Projects that demonstrate the commercial viability of~~
4 ~~producing clean transportation fuels, including ethanol, from~~
5 ~~municipal solid waste, and converting landfill gas to clean~~
6 ~~transportation fuels, including compressed natural gas, liquefied~~
7 ~~natural gas, or methane-based fuels, for use in existing diesel~~
8 ~~engines as a means of reducing both criteria air pollutants and~~
9 ~~greenhouse gas emissions from on-road or off-road vehicles. A~~
10 ~~project that utilizes thermal technologies is not eligible for~~
11 ~~expenditure pursuant to this subparagraph.~~

12 ~~(e) (1) On and after July 1, 2009, except as provided in~~
13 ~~paragraph (3), but no later than July 1, 2020, 25 percent of the fee~~
14 ~~revenues shall be deposited in the State Solid Waste Closure Trust~~
15 ~~Fund, which is hereby established in the State Treasury and~~
16 ~~continuously appropriated for expenditure by the board.~~

17 ~~(2) The board may expend the money in the State Solid Waste~~
18 ~~Closure Trust Fund to pay for any future liability of the state~~
19 ~~resulting from the failure of a landfill operator to meet its~~
20 ~~responsibilities for landfill closure and postclosure care.~~

21 ~~(3) The board shall continue to deposit the percentage amount~~
22 ~~of the fees specified in paragraph (1) to maintain an amount of~~
23 ~~fifty million dollars (\$50,000,000) in the State Solid Waste Closure~~
24 ~~Trust Fund. If the amount of the fee revenues allocated to the State~~
25 ~~Solid Waste Closure Trust Subaccount exceeds that amount, the~~
26 ~~board shall expend those excess amounts upon appropriation by~~
27 ~~the Legislature in the annual Budget Act.~~

28 ~~(a) On and after July 1, 2009, until June 30, 2012, 25 percent~~
29 ~~of the fee revenues shall be expended, in accordance with the~~
30 ~~requirements of subdivision (b) of Section 48004.5, to fund both~~
31 ~~of the following:~~

32 ~~(1) (A) Clean fuel demonstration projects by operators of~~
33 ~~medium- and heavy-duty trucks used at solid waste facilities,~~
34 ~~operators of medium- and heavy-duty trucks used for the collection~~
35 ~~of recyclables, yard waste, and garbage, and operators of trucks~~
36 ~~used for the delivery and servicing of residential and commercial~~
37 ~~solid waste, recycling, and yard waste containers.~~

38 ~~(B) The projects funded pursuant to subparagraph (A) may~~
39 ~~include, but not be limited to, demonstration projects using~~
40 ~~low-carbon intensity biofuels, natural gas, waste-derived fuels,~~

1 *hydrogen, or hybrid technologies that reduce criteria pollutants*
2 *or greenhouse gas emissions.*

3 *(2) (A) Projects that demonstrate the commercial viability of*
4 *producing clean transportation fuels, including ethanol, from*
5 *municipal solid waste, and converting landfill gas to clean*
6 *transportation fuels, including compressed natural gas, liquefied*
7 *natural gas, or methane-based fuels.*

8 *(B) A project that utilizes high-temperature thermal technologies*
9 *is not eligible for funding pursuant to this paragraph.*

10 *(b) On and after July 1, 2009, until June 30, 2020, 30 percent*
11 *of the fee revenues shall be expended by the board, in accordance*
12 *with the requirements of subdivision (b) of Section 48004.5, for*
13 *compost projects that will advance the board's goal of diverting*
14 *50 percent of compostable organics from land disposal by the year*
15 *2020.*

16 *(c) (1) On and after July 1, 2009, except as provided in*
17 *paragraph (5), but no later than July 1, 2020, 25 percent of the*
18 *fee revenues shall be deposited in the State Solid Waste Postclosure*
19 *Trust Fund, which is hereby established in the State Treasury and*
20 *continuously appropriated for expenditure by the board.*

21 *(2) The board may only expend the money in the State Solid*
22 *Waste Postclosure Trust Fund to pay for required closure and*
23 *postclosure activities that have not been performed by the owner*
24 *of a solid waste landfill. The board may expend these funds only*
25 *for closure and postclosure activities at a solid waste landfill that*
26 *meets the following conditions:*

27 *(A) The solid waste landfill owner has failed to comply with a*
28 *final order issued by the board.*

29 *(B) The board finds that financial assurance mechanisms are*
30 *inadequate to fund necessary compliance activities.*

31 *(C) The board determines that the solid waste landfill was*
32 *operating pursuant to a valid solid waste facilities permit on or*
33 *after January 1, 1990, and was required to have financial*
34 *assurances pursuant to Section 43600.*

35 *(3) For the purposes of this subdivision, a solid waste landfill*
36 *does not include any portion of a landfill that was authorized by*
37 *permit to dispose of hazardous waste.*

38 *(4) The board shall recover from the solid waste landfill owner*
39 *the amount of the money expended from the State Solid Waste*
40 *Postclosure Trust Fund as a result of the landfill owner's failure*

1 *to comply with a final order issued by the board. The board shall*
2 *deposit, in the State Solid Waste Postclosure Trust Fund, all funds*
3 *recovered by the board pursuant to an action authorized by this*
4 *paragraph against the owner of a solid waste landfill, less the*
5 *actual and necessary costs incurred by the board in taking the*
6 *recovery action.*

7 *(5) The board shall continue to deposit the percentage amount*
8 *of the fees specified in paragraph (1) to maintain an amount of*
9 *fifty million dollars (\$50,000,000) in the State Solid Waste*
10 *Postclosure Trust Fund. If the amount of the fee revenues allocated*
11 *to the State Solid Waste Postclosure Trust Fund exceeds that*
12 *amount, the board shall expend those excess amounts upon*
13 *appropriation by the Legislature in the annual Budget Act, but*
14 *shall recommence deposits into the fund at any time the fund*
15 *balance is less than forty million dollars (\$40,000,000).*

16 *(6) On or before January 1, 2010, the board shall report to the*
17 *Legislature on expenditures made from the State Solid Waste*
18 *Postclosure Trust Fund, the status of the board's cost recovery*
19 *actions, and any recommended statutory changes that are required*
20 *to ensure adequate resources are available to carry out the*
21 *purposes of the State Solid Waste Postclosure Trust Fund.*

22 *(7) The Legislature finds and declares all of the following:*

23 *(A) It is the intent of the Legislature to create and maintain a*
24 *State Solid Waste Postclosure Trust Fund dedicated exclusively*
25 *to protecting the General Fund from expenditures resulting from*
26 *the failure of the owner of a solid waste landfill to comply with a*
27 *final order from the board relating to compliance with closure*
28 *and postclosure requirements. The State Solid Waste Postclosure*
29 *Trust Fund is created so the state may respond rapidly to violations*
30 *of closure and postclosure requirements, thereby limiting*
31 *environmental harm and threats to health and safety.*

32 *(B) It is the intent of the Legislature that this subdivision*
33 *authorizes a complete cost recovery by the state of expenditures*
34 *from the State Solid Waste Postclosure Trust Fund and that the*
35 *State Solid Waste Postclosure Trust Fund be preserved for its*
36 *intended purpose and that the board monitor and evaluate the*
37 *scope, size, and effectiveness of the State Solid Waste Postclosure*
38 *Trust Fund to ensure adequate resources are available to carry*
39 *out the purposes of the State Solid Waste Postclosure Trust Fund.*

1 (d) (1) *On and after July 1, 2009, until June 30, 2016, 20*
2 *percent of the fee revenues shall be expended by the board, upon*
3 *appropriation by the Legislature in the annual Budget Act.*

4 (2) *On and after July 1, 2012, until June 30, 2017, 45 percent*
5 *of the fee revenues shall be expended by the board, upon*
6 *appropriation by the Legislature in the annual Budget Act.*

7 (3) *On and after July 1, 2020, 100 percent of the fee revenues*
8 *shall be expended by the board, upon appropriation by the*
9 *Legislature in the annual Budget Act.*

10 SEC. 4. Section 48004 of the Public Resources Code is
11 amended to read:

12 48004. (a) The money in the account shall be used by the
13 board, upon appropriation by the Legislature, for the following
14 purposes:

15 (1) The administration and implementation of this division by
16 the board.

17 (2) The state water board's and regional water board's
18 administration and implementation of Division 7 (commencing
19 with Section 13000) of the Water Code at solid waste disposal
20 sites.

21 (3) Grant and loan programs that are authorized or required to
22 be administered by the board pursuant to this division.

23 (b) It is the intent of the Legislature that an amount which is
24 sufficient to fund state water board and regional water board
25 regulatory activities for solid waste landfills be appropriated from
26 the account by the Legislature in the annual Budget Act. Those
27 persons who are required to pay the fee imposed pursuant to
28 Section 48000 shall not be required to pay the annual fee imposed
29 pursuant to subdivision (d) of Section 13260 of the Water Code
30 with regard to the same discharge.

31 (c) Notwithstanding subdivisions (a) and (b), if the fee
32 established pursuant to Section 48000 does not generate revenues
33 sufficient to fund the programs specified in this section, or if the
34 amount appropriated by the Legislature for these purposes is
35 reduced, those reductions shall be equally and proportionally
36 distributed between funding for the solid waste programs of the
37 state water board and the regional water boards and the board.

38 SEC. 5. *Section 48004.5 is added to the Public Resources Code,*
39 *to read:*

1 48004.5. (a) *The board may expend moneys in the Integrated*
2 *Waste Management Account in the Integrated Waste Management*
3 *Fund and other funds as appropriate, upon appropriation by the*
4 *Legislature, for purposes of providing grants and loans pursuant*
5 *to Section 48001.5.*

6 (b) (1) *When awarding grant funds or loans pursuant to*
7 *subdivision (a) or (b) of Section 48001.5, the board shall make*
8 *not less than 40 percent available for eligible projects in Southern*
9 *California and not less than 40 percent available for projects in*
10 *Northern California.*

11 (2) *For the purposes of this subdivision, “Southern California”*
12 *means the counties of Imperial, Los Angeles, Orange, Riverside,*
13 *Santa Barbara, San Bernardino, San Diego, and Ventura.*
14 *“Northern California” means all other California counties.*

15 SEC. 6. *No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *a local agency or school district has the authority to levy service*
18 *charges, fees, or assessments sufficient to pay for the program or*
19 *level of service mandated by this act, within the meaning of Section*
20 *17556 of the Government Code.*